

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**CURTIS HAMILTON, et al.**

**CIVIL ACTION**

**VERSUS**

**NO. 12-1398**

**OCHSNER HEALTH SYSTEMS, INC., et al.**

**SECTION: "G"(1)**

**ORDER AND REASONS**

Before the Court is Plaintiffs Curtis Hamilton and Rosa Hamilton's ("Plaintiffs") Motion in Limine Relative to Exclusion of Testimony By Jane Eason, PT,<sup>1</sup> filed on December 7, 2012. Jane Eason is a proposed expert witness for Defendant Ochsner Health Systems, Inc. ("Ochsner") listed as a "will call" witness in the proposed pre-trial order.<sup>2</sup> However, a scheduling order was issued in this matter on August 9, 2012 and states that, "Motions *in limine* regarding the admissibility of expert testimony shall be filed and served in sufficient time to permit hearing thereon no later than **NOVEMBER 21, 2012.**"<sup>3</sup>

"A schedule may only be modified for good cause and with the judge's consent."<sup>4</sup> A district court does not abuse its discretion by denying a motion as untimely when the movant never requested leave to amend the scheduling order deadlines nor provides an explanation as to why the motion was untimely filed.<sup>5</sup> Here, Plaintiffs have never requested a modification of the deadline to file motions *in limine* regarding the admissibility of expert testimony and, moreover, have not even

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<sup>1</sup> Rec. Doc. 27.

<sup>2</sup> See Rec. Doc. 26 at p. 14.

<sup>3</sup> Rec. Doc. 7 at p. 2 (emphasis in original).

<sup>4</sup> Fed. R. Civ. P. 16(b)(4).

<sup>5</sup> *Argo v. Woods*, 399 Fed. App'x. 1, 3 (5th Cir. 2010).

acknowledged that the pending motion is untimely. Because of the late filing, the submission date for this motion is January 7, 2013 – the day trial is set to commence. Therefore, the Court will deny the pending motion as untimely.<sup>6</sup> Accordingly,

**IT IS ORDERED** that Plaintiffs’ Motion in Limine Relative to Exclusion of Testimony By Jane Eason, PT<sup>7</sup> is **DENIED**.

**NEW ORLEANS, LOUISIANA**, this 11th day of December, 2012.

  
**NANNETTE JOLIVETTE BROWN**  
**UNITED STATES DISTRICT JUDGE**

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<sup>6</sup> *Id.* (citing *Sea-Land Servs., Inc. v. D.I.C., Inc.*, 102 F.R.D. 252, 253-54 (S.D. Tex. 1984) (denying a motion filed after the cut-off date because “[t]he Defendant offers the court no explanation or showing of ‘good cause’ why on the eve of trial the motion should be considered.”)).

<sup>7</sup> Rec. Doc. 27.