

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION

JOSHUA L. BASCO

CIVIL ACTION NO. 08-0468

VS.

MAGISTRATE JUDGE METHVIN

DR. FELIX SPIEGEL

BY CONSENT OF THE PARTIES

*RULING ON PLAINTIFF'S MOTION FOR LEAVE  
TO FILE MOTION TO STRIKE DEFENDANT'S EXPERTS  
(Rec. Doc. 63)*

Before the court is plaintiff's motion for leave to file a motion to strike the testimony of defendant's expert witnesses, Dr. Sherman and Dr. Thomas. The motion is opposed.

*Argument*

The deadline for filing motions to exclude expert testimony was July 27, 2009.<sup>1</sup> Plaintiff argues the defendant's expert depositions could not be taken until September 1, 2009, and it was information discovered at those depositions that forms the bases of the motion to strike.

Specifically, plaintiff states at the expert depositions it was discovered that several drafts of the expert's written opinions were made, but never produced despite a subpoena duces tecum request having been served upon them. Plaintiff also states it was discovered at the September 1, 2009, deposition that the experts were not the only authors of their reports – that in fact an associate attorney in defense counsel's firm wrote part of the reports.

In opposition to the motion, defendant argues the motion is untimely, and "Plaintiff has had possession of Dr. Sherman's and Dr. Thomas' reports since May 2009 and, thus, knew the substance of the doctors' opinions, yet waited until merely one month before trial to file his

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<sup>1</sup>See *Scheduling Order* (rec. doc. 42).

motion to strike their testimony.”<sup>2</sup> Defendant also argues the bases of plaintiff’s motion to strike, counsel’s assistance with the expert reports, is not a proper ground to strike or limit the expert’s testimony under Fed. R. Evid. 702, and criteria set forth in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), and progeny.

***Discussion***

Plaintiff could not have filed his motion to strike within the deadlines of the scheduling order, as the information forming the bases of the motion was not available until the depositions of Drs. Sherman and Thomas on September 1, 2009. Therefore, the court will allow the motion to be filed. Whether the motion is well-founded is a separate issue.

***Conclusion***

For the reasons given above,

**IT IS ORDERED** that plaintiff’s Motion and Order for Leave to File Motion to Strike the Testimony of Dr. Vadim Sherman and Dr. Clifton Thomas (rec. doc. 63) is **GRANTED**.

Signed at Lafayette, Louisiana, on September 21, 2009.

  
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Mildred E. Methvin  
United States Magistrate Judge  
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<sup>2</sup>*Opposition* (rec. doc. 66), p. 1.