

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

S. Dye,

Plaintiff,

vs.

BNSF RAILWAY COMPANY, a  
Delaware Corporation,

Defendant.

CV-14-150-BLG-CSO

**ORDER GRANTING BNSF'S  
MOTION TO EXCLUDE  
TESTIMONY OF DR. SMELKO**

Defendant BNSF Railway Company (“BNSF”) filed a motion to exclude the testimony of Plaintiff S. Dye’s (“Dye”) rebuttal expert witness, Dr. Bowman Smelko, under Fed. R. Civ. P. 37(c). *BNSF’s Mtn. to Exclude (ECF No. 37)*. In her response, Dye does not substantively object to the motion and affirmatively “withdraws Dr. Smelko as her rebuttal expert witness.” *Dye’s Resp. Br. (ECF No. 44 at 2)*.

Although counsel for the parties disagree about the content and scope of their communications, such disagreements are not directly pertinent to the disposition of this pending motion. Dye has not explained her apparent failure to make required expert disclosures and has withdrawn Dr. Smelko as a witness.

Accordingly, IT IS ORDERED that BNSF's motion to exclude the testimony of Dr. Smelko (*ECF No. 37*) is GRANTED. The Court will address other pending motions in subsequent orders.

DATED this 14<sup>th</sup> day of January, 2016.

/s/ Carolyn S. Ostby  
United States Magistrate Judge